

**NOTICE OF FAIRNESS HEARING  
BEFORE THE  
DEPARTMENT OF CORPORATIONS  
OF THE  
STATE OF CALIFORNIA**

IN THE MATTER OF THE  
APPLICATION OF

## Avocent Corporation

a corporation organized under the laws of the State of Delaware for a permit authorizing the issuance of securities pursuant to Section 25121 of the Corporate Securities Law of 1968, as amended.

NOTICE OF HEARING PURSUANT TO  
SECTION 25142 OF THE CALIFORNIA  
CORPORATIONS CODE

**File No. 506-3193**

To: **LANDesk Group Limited Shareholders And Other  
Security Holders**

**NOTICE IS HEREBY GIVEN** that on August 24, 2006, at 10:00 a.m. (local time), a public hearing will be held before W. Anthony Colbert, Esq., Senior Corporations Counsel on behalf of the Commissioner of Corporations of the State of California, at 71 Stevenson Street, Suite 2100, San Francisco, California 94105.

The hearing relates the proposed acquisition of LANDesk Group Limited, a company organized under the laws of Ireland, by Avocent Corporation, a Delaware corporation.

The hearing is being held pursuant to an Application for Qualification of Securities by Permit under Section 25121 of the California Corporate Securities Law of 1968, as amended, filed by Avocent on May 11, 2006.

## ***PURPOSE OF THE HEARING***

The purpose of the hearing is to enable the Commissioner of Corporations to determine the fairness of the terms and conditions of the transactions described below, pursuant to Section 25142 of the California Corporate Securities Law of 1968, as amended.

Pursuant to a Transaction Agreement dated as of April 26, 2006 (attached as Exhibit A), Avocent proposes, through a subsidiary created for the purpose of facilitating the acquisition, to acquire LANDesk by making an Offer pursuant to the Offer Document (attached as Exhibit B) to acquire all of the outstanding preferred shares, ordinary shares, vested options and warrants of LANDesk.

As a result of the closing of the Offer and the subsequent Compulsory Acquisition described below, the shareholders of LANDesk will receive an amount of cash and shares of common stock of Avocent in exchange for their shares of LANDesk capital stock and will become stockholders of Avocent.

All vested options of LANDesk not exercised prior to the closing of the Offer will be cancelled, and the holders will receive the same consideration as LANDesk shareholders less an amount equal to the aggregate exercise price of such options. All LANDesk unvested stock options not exercised prior to the closing of the Offer will be assumed by Avocent. All LANDesk warrants not exercised prior to the Closing of the Offer will be terminated without consideration to the holders.

If the Commissioner of Corporations determines that the terms and conditions of the transactions are fair, he will issue a permit qualifying the issuance of Avocent securities in the Offer and the Compulsory Acquisition. Assuming the permit is granted following the hearing, Avocent, through its subsidiary, will make an Offer to the holders of outstanding preferred shares, ordinary shares, vested options and warrants of LANDesk. After the Offer has been completed and accepted by holders of not less than 80% in nominal value of each class of shares in the issued share capital of LANDesk, Avocent, through its subsidiary, will acquire compulsorily any outstanding LANDesk preferred shares and ordinary shares from shareholders who have not accepted the Offer on the same terms as those who accepted the Offer in accordance with Section 204 the Companies Act 1963 of Ireland or any other means available under applicable laws.

The shares of Avocent common stock that will be issued in connection with the Offer and the Compulsory Acquisition will not be registered under the Securities Act of 1933, as amended, but will be issued in reliance upon the exemption contained in Section 3(a)(10) of the Securities Act. Accordingly, the Offer is conditioned on, among other things, Avocent obtaining the permit from the Commissioner of Corporations following the hearing.

## **NOTICE NOT AN OFFER**

This notice is not an offer to sell or the solicitation of an offer to buy any securities in connection with the transactions. The transactions in connection with the Offer have not been qualified with the Commissioner of Corporations, and therefore, the distribution of securities in

connection with the Offer or the payment or receipt of any part of the consideration for securities in connection with the Offer before the permit is issued is unlawful.

## **AVOCENT'S DESCRIPTION OF AVOCENT AND LANDESK BUSINESSES**

### **Avocent**

Avocent markets its products around the world to original equipment manufacturers (OEMs), dealers, distributors, resellers, and end users, primarily through its sales and customer support staff, advertisements in trade publications, on-line sponsorships, and participation in major industry trade shows. A substantial portion of Avocent's sales is to major server OEMs that purchase Avocent's switching systems on a private-label or branded basis.

### **LANDesk**

LANDesk delivers systems, security and process management solutions. LANDesk<sup>®</sup> solutions simplify IT management of desktops, servers, mobile devices and processes. LANDesk has focused on developing systems and security management solutions for more than 19 years in the systems and security and process management markets. With LANDesk<sup>®</sup> solutions, enterprises can execute management and protection of enterprise IT systems from a single console and can build and execute automated workflows with a single tool.

## **REASONS FOR THE ACQUISITION**

### **Avocent Reasons for the Acquisition**

Avocent believes that its acquisition of LANDesk will build on its products for information technology management. Avocent believes that the acquisition of LANDesk will establish Avocent as a leading provider of integrated systems, security and process management solutions, increasing the addressable market for its products. Avocent has historically had a strong presence in the IT infrastructure management markets, where its customers use Avocent products in managing server and network infrastructure elements, primarily in the datacenter environment. LANDesk's products serve a number of the same customers in enabling these customers to monitor and manage both server and desktop elements, and the LANDesk products rely on many of the same core solutions and technologies in delivering these services. Avocent believes that the acquisition of LANDesk will enable it to expand its customer base, broaden its geographic distribution, improve its visibility into the systems management, desktop management and handheld management markets, improve its time to revenue, complementarily diversify and strengthen its vertically integrated portfolio.

### **LANDesk Reasons for the Acquisition**

In reaching its decision to approve the acquisition and the Transaction Agreement, the LANDesk board of directors identified several reasons for, and potential benefits to LANDesk shareholders of, the acquisition. LANDesk believes there are a number of potential benefits of the proposed acquisition, including, among others:

- the opportunity for LANDesk shareholders to realize immediate value for their currently illiquid investment in LANDesk in the form of cash and Avocent shares that have a liquid public trading market;
- the belief that the values offered by the acquisition for all LANDesk shareholders exceeds the values which could reasonably be expected to be realized from other alternatives, based on a process of exploring alternatives prior to entering into the Transaction Agreement;
- the receipt of Avocent common stock will provide LANDesk shareholders with the opportunity to participate in and benefit from the future growth potential of a larger, more diversified publicly held company;
- the expected benefits to LANDesk's employees and the anticipation that substantially all of the LANDesk employees will have the opportunity to continue as LANDesk employees following the acquisition;
- the expected benefits to LANDesk's customers, including the anticipation that LANDesk will be able to (i) provide its customers with continued support and a broader range of product capabilities following the acquisition, and (ii) meet the needs of its customers more effectively and efficiently;
- the greater financial and marketing resources of Avocent may allow LANDesk to compete more effectively by providing LANDesk with enhanced ability to develop new products and greater functionality for existing products, and may present opportunities for marketing LANDesk products in combination with Avocent products;
- the relatively active mergers and acquisition environment indicate that this is a favorable time to pursue a sale of LANDesk;
- the prospects of LANDesk as an independent company, including risks and increased costs associated with pursuing an initial public offering and operating as a public company;
- the risk that if LANDesk does not accept the Avocent proposal, competitors of LANDesk could develop products that reduce LANDesk's competitive advantage, thus increasing the competitive pressure on LANDesk and potentially reducing the number of companies that would be interested in acquiring LANDesk or the consideration that such potential acquirers would be willing to offer for LANDesk; and
- the risks associated with LANDesk's anticipated requirements for additional investment capital in order to pursue its growth strategy if it continued as an independent company, the valuations at which it might raise additional capital compared to the consideration being paid by Avocent in the acquisition, and the anticipated dilution to LANDesk Shareholders that would result from additional investment.

In the course of its deliberations, the LANDesk board also considered a number of risks and potentially negative factors related to the acquisition.

## **AVOCENT'S DESCRIPTION OF THE MATERIAL FEATURES OF THE OFFER**

*The following is a summary of the Offer and the subsequent Compulsory Acquisition. Because it is a summary, it is not complete and is qualified in its entirety by reference to the Transaction Agreement (attached as Exhibit A) and the Offer Document (attached as Exhibit B). Capitalized terms not defined in this notice shall have the meanings set forth in the Transaction Agreement.*

**A. The Offer.** Avocent, through its subsidiary, will make an Offer to the holders of outstanding preferred shares, ordinary shares, vested options and warrants of LANDesk.

**B. The Compulsory Acquisition.** After the Offer has been completed and accepted by holders of not less than 80% in nominal value of each class of shares in the issued share capital of LANDesk, Avocent, through its subsidiary, will acquire compulsorily any outstanding LANDesk preferred shares and ordinary shares from shareholders who have not accepted the Offer on the same terms as those who accepted the Offer, in accordance with Section 204 the Companies Act 1963 of Ireland or any other means available under applicable laws.

**C. Aggregate Consideration.** In consideration of the closing of the Offer and the Compulsory Acquisition, Avocent will issue up to \$200,000,000 worth of shares of Avocent common stock and an amount of cash equal to \$200,000,000. The amount of cash consideration will be adjusted pursuant to the terms of the Transaction Agreement to include fifty percent of the aggregate amount of the exercise price of LANDesk vested options. For more information regarding how the aggregate consideration amount is calculated, please see Part I – Offer Letter of the Offer Document.

### **D. Effect of the Offer and the Compulsory Acquisition on Rights of Existing Securityholders.**

**1. LANDesk Shareholders.** As a result of the Offer and Compulsory Acquisition, the shareholders of LANDesk will receive cash and shares of Avocent common stock in exchange for their shares of LANDesk capital stock as follows:

#### **a. LANDesk Series A Preferred Shares:**

(i) an amount of cash, without interest, equal to the Preferred Share Initial Cash Distribution Amount;

(ii) that number of shares of Avocent common stock equal to the Per Share Stock Distribution Amount;

(iii) following the closing, depending on the amount of LANDesk revenue for 2006, the Per Share Contingent Cash Distribution Amount, if any; and

(iv) approximately eighteen months following the closing, unless reduced as a result of claims against the escrow in connection with indemnification obligations of LANDesk securityholders, the Per Share Escrow Amount.

**b. LANDesk Ordinary Shares:**

(i) an amount of cash, without interest, equal to the Per Share Initial Cash Distribution Amount;

(ii) that number of shares of Avocent common stock equal to the Per Share Stock Distribution Amount;

(iii) following the closing, depending on the amount of LANDesk revenue for 2006, the Per Share Contingent Cash Distribution Amount, if any; and

(iv) approximately eighteen months following the closing, unless reduced as a result of claims against the escrow in connection with indemnification obligations of LANDesk securityholders, the Per Share Escrow Amount.

**c. Example Calculations of Initial Consideration:**

(i) Example Calculation of Initial Consideration for holder of 100 LANDesk Preferred Shares. Not taking into account contingent cash consideration and amounts that may be subsequently released from escrow, a holder of 100 LANDesk preferred shares would receive \$130.44 in cash, 4 shares of Avocent common stock and additional cash in the amount of \$7.78 in lieu of fractional shares.

(ii) Example Calculation of Initial Consideration for holder of 100 LANDesk Ordinary Shares. Not taking into account contingent cash consideration and amounts that may be subsequently released from escrow, a holder of 100 LANDesk ordinary shares would receive \$127.58 in cash, 4 shares of Avocent common stock and additional cash in the amount of \$7.78 in lieu of fractional shares.

(iii) Example Calculation of Initial Consideration and Contingent Cash Consideration for holder of 100 LANDesk Preferred Shares. Assuming LANDesk revenue for 2006 exceeds the maximum amount set forth in the Offer Document with respect to contingent cash consideration, a holder of 100 LANDesk preferred shares would receive contingent cash consideration of \$47.08, for an aggregate cash amount of \$177.52, 4 shares of Avocent common stock and additional cash in the amount of \$7.78 in lieu of fractional shares.

(iv) Example Calculation of Initial Consideration and Contingent Cash Consideration for holder of 100 LANDesk Ordinary Shares. Assuming LANDesk revenue for 2006 exceeds the maximum amount set forth in the Offer Document with respect to contingent cash consideration, a holder of 100 LANDesk ordinary shares would receive contingent cash consideration of \$47.08, for an aggregate cash amount of \$174.66, 4 shares of Avocent common stock and additional cash in the amount of \$7.78 in lieu of fractional shares.

In each of the foregoing examples, the consideration has been reduced by each LANDesk shareholder's respective amounts to be placed in escrow in connection with its indemnification obligations. All consideration amounts in this notice are based on (i) an assumed closing date of July 17, 2006 for the purposes of calculating the closing price for Avocent shares of common stock and (ii) certain assumptions regarding LANDesk's capitalization. In addition, the above examples of contingent cash consideration amounts are based on an assumed level of LANDesk revenue for 2006. These numbers are for informational purposes only and will change based on the actual closing date, the actual capitalization numbers of LANDesk and the actual amount of LANDesk revenue for 2006.

For more information regarding the consideration to be issued to LANDesk securityholders in connection with the acquisition, see Part I – Offer Letter of the Offer Document.

**d. Summary of Aggregate Stock Consideration.**

The following summary provides aggregate information regarding the allocation of the stock consideration among holders of LANDesk ordinary shares, LANDesk preferred shares, LANDesk warrants and LANDesk vested options<sup>1</sup>:

	<b>Allocated Value of the Stock Consideration</b>	<b>Avocent Shares</b>	<b>% of Avocent Shares Issued in Transaction</b>	<b>Ownership % of LANDesk</b>
<b>Ordinary Shares</b>	\$ 24,472,871	958,968.32	12.24%	12.24%
<b>Series A Preferred Shares</b>	\$ 157,295,950	6,163,634.40	78.65%	78.65%
<b>Warrants</b>	\$ 7,944,228	311,294.21	3.97%	3.97%
<b>Vested Options</b>	\$ 10,286,951	403,093.67	5.14%	5.14%
<b>Total</b>	\$ 200,000,000	7,836,990.60	100.00%	100.00%

<sup>1</sup> The following assumptions have been used in determining the value of the aggregate consideration: (i) a share price for Avocent common stock of \$25.52; (ii) all LANDesk warrant holders exercising their warrants prior to the closing of the acquisition; (iii) the indemnified parties not making any successful claims against the escrow account; and (iv) no court orders issued in Ireland ordering a variance in the transfer or that the compulsory transfer not take effect. In the event any of these assumptions are inaccurate, the actual consideration received by LANDesk securityholders may differ from the above amounts.

**2. Holders of Vested LANDesk Options.** All vested options of LANDesk not exercised prior to the closing of the Offer will be cancelled, and the holders will receive the same consideration as LANDesk shareholders less an amount equal to the aggregate exercise price of such options.

3. **Holders of Unvested LANDesk Options.** Avocent will assume all unvested LANDesk options. For more information on the exchange ratio see Part I – Offer Letter of the Offer Document.

4. **Holders of LANDesk Warrants.** All LANDesk warrants not exercised prior to the closing of the acquisition will be terminated without consideration to the holders.

**E. Escrowed Consideration.**

In connection with the closing, \$60,000,000 worth of shares of Avocent common stock will be deposited in an escrow account to indemnify Avocent and its officers, directors and affiliates for certain matters following the closing of the Offer and will be subject to a risk of partial or total loss. For further information on the ability of Avocent to make indemnification claims, see the description under “Indemnification” below. Subject to any such indemnification claims, the shares of Avocent common stock held in escrow shall be distributed to LANDesk shareholders based on their pro rata holdings in such shares two (2) business days following the date that is eighteen (18) months following the closing of the Offer.

**F. Fractional Shares.**

No fractional shares of Avocent common stock will be delivered as consideration to LANDesk securityholders, but in lieu of fractional share, a LANDesk securityholder will receive an amount in cash equal to the fractional share multiplied by a share price of Avocent common stock determined in accordance with the terms and provisions of the Transaction Agreement.

**G. Representations and Warranties.**

The Transaction Agreement contains customary representations and warranties by LANDesk, Avocent and Avocent’s acquisition subsidiary. The representations and warranties are set forth in Article 4 and Article 5 of the Transaction Agreement.

Each LANDesk shareholder that accepts the Offer will be required to make certain representations to Avocent’s acquisition subsidiary as to its ownership, authority and other matters pertinent to its ability to sell and transfer unencumbered ownership of its LANDesk shares. See Schedule 3 to the Offer Document for a complete understanding of these representations and warranties.

**H. Conditions to Completion of the Acquisition.**

The obligations of Avocent, Avocent’s acquisition subsidiary, LANDesk and the LANDesk shareholders accepting the Offer to complete the acquisition and the other transactions contemplated by the Transaction Agreement and the Offer Document are subject to the satisfaction or waiver of certain conditions, which are set forth in Article 8 of the Transaction Agreement.



## **I. Termination of the Transaction Agreement.**

The Transaction Agreement may be terminated at any time prior to the Offer becoming unconditional. The termination provisions are set forth in Section 3.3 of the Transaction Agreement.

## **G. Indemnification.**

Under the terms of the Transaction Agreement and the Offer, the shareholders of LANDesk will indemnify Avocent, including its affiliates, for certain damages Avocent may suffer related to, arising out of, or in connection with, any breach of, or default under, any representations, warranties or covenants (unless cured) given or made by LANDesk or the LANDesk shareholders in the Transaction Agreement or the Offer Document. The terms related to the indemnification obligations are set forth in Schedules 4, 5 and 8 to the Offer Document,

The Offer Document sets forth the following limitations and thresholds regarding potential indemnification payments by the LANDesk shareholders:

- Avocent will not be entitled to indemnification payments until the aggregate of all damages to Avocent exceed \$1,000,000;
- once aggregate damages exceed \$1,000,000, Avocent may only collect the amount of damages which exceed the \$1,000,000 threshold;
- the aggregate liability for all indemnification claims made by Avocent shall not exceed the escrowed consideration, excepting those claims based on fraud or willful misrepresentation or claims against a specific selling shareholder arising out of those representations by such selling shareholder as to its ownership, authority and other matters pertinent to its ability to sell and transfer unencumbered ownership of its LANDesk shares.

The representations and warranties in the Transaction Agreement will survive until the date that is eighteen (18) months following the closing of the Offer, except that certain claims shall survive until the expiration of all applicable statutes of limitation. These indemnity rights are the sole and exclusive remedies of Avocent and its affiliates for any and all damages or any other liabilities sustained or incurred by Avocent or its affiliates in connection with the Transaction Agreement, the Offer and the Compulsory Acquisition, except as noted above.

Following the closing of the Offer, Avocent may, at its sole option, make an election under Section 338(g) of the Internal Revenue Code of 1986, as amended (the "Code"), which election may in turn create certain additional tax liabilities for non-corporate LANDesk shareholders residing or domiciled in the United States who own ten percent (10%) or more of the LANDesk shares and persons who are the direct and indirect partners, members and other equity holders of any such shareholders, if applicable. Avocent has agreed to indemnify such shareholders and such other persons as to amounts payable with respect to such additional tax in accordance with Schedule 7 to the Offer Document.

## **H. The Escrow Agreement.**

Avocent, the representative of LANDesk shareholders, and the escrow agent shall enter into an escrow agreement setting forth the obligations of such parties with regards to the holding and distribution of the escrowed consideration. In accordance with the terms of the escrow agreement, the escrowed consideration will be held in escrow to reimburse Avocent for damages resulting from the items set forth in Section 4.01(a) and (b) of Schedule 4 to the Offer Document. Schedules 4 and 5 to the Offer Document and the form of escrow agreement attached as Exhibit C to the Transaction Agreement set forth the terms and conditions of the escrowed consideration and the indemnification rights of the indemnified parties. Schedule 8 to the Offer Document sets forth the appointment of the representative of the LANDesk shareholders and its rights and responsibilities.

## **I. Amendment and Waiver of the Transaction Agreement.**

LANDesk and Avocent may amend, modify or supplement the Transaction Agreement at any time prior to the closing of the Offer; provided, however, to the extent that such amendment, modification, or supplement adversely affects any LANDesk shareholder in a manner different from any other LANDesk shareholder, the shareholder representative must obtain written consent of such affected LANDesk shareholder.

## **J. General U.S. Federal Income Tax Effects to LANDesk Shareholders.**

The acquisition will be treated for U.S. federal income tax purposes as a taxable sale by the LANDesk shareholders of their LANDesk shares. The specific tax consequences to a LANDesk shareholder will depend on the shareholder's particular circumstances.

## **AVOCENT'S DESCRIPTION OF CERTAIN OTHER AGREEMENTS RELATED TO THE ACQUISITION.**

**Various employees, officers, directors and shareholders of LANDesk entered or will enter into certain agreements in connection with the acquisition. These agreements are described below.**

### **The Irrevocable Undertakings**

Concurrently with the execution of the Transaction Agreement, Intel Atlantic, Inc., Zhuo "Joe" Wang, vSpring SBIC, L.P. and Vector Capital Corporation and certain of its affiliates, who collectively hold in excess of 80% in nominal value of each class of shares in the issued share capital of LANDesk, entered into irrevocable undertakings substantially in the form attached as Exhibit B to the Transaction Agreement. These LANDesk shareholders agreed in these irrevocable undertakings to sell all of their LANDesk shares pursuant to the Offer.

### **Principal Holders of Securities**

No officer, director or principal stockholder of Avocent or Avocent's acquisition subsidiary has any material interest in the acquisition, other than an interest arising solely from ownership of securities of Avocent.

Other than as described below, no officer, director or 10% shareholder of LANDesk has a material interest in the acquisition or any related transactions, other than an interest arising solely from the ownership of securities of LANDesk where the specified person receives no extra or special benefit not shared on a pro-rata basis by all holders of securities of that class:

1. The following shareholders have employees, partners or other shareholder representatives on the LANDesk board of directors:

<b>Name of Director</b>	<b>Name of Affiliated Shareholder</b>
Zhuo "Joe" Wang	Zhuo "Joe" Wang
Edward Ekstrom	vSpring
Alexander Slusky	Vector
Christopher Nicholson	Vector

2. Each of David M. Breck, Corey Clint Ercanbrack, Terry R. Haas, William Smith, Ronald N. Gibbons, Thomas Davis, Robert C. Macfarlane, David R. Taylor and Matthew S. Dean are expected to enter into employment and noncompetiton agreements with Avocent which will become effective upon consummation of the Acquisition and will provide for varying months of severance payments following termination of employment based on the individual's employment position with Avocent.

3. The Transaction Agreement contemplated that Zhuo "Joe" Wang, LANDesk's Chief Executive Officer and President, Bruce C. Felt, Jr., LANDesk's Chief Financial Officer and Matthew S. Dean, LANDesk's General Counsel and Secretary, would enter into severance and transition agreements with Avocent. However, the parties currently expect that neither Mr. Wang, Mr. Dean, nor Mr. Felt, will enter into severance and transition agreements with Avocent. Upon consummation of the acquisition, Mr. Wang will continue his employment relationship with Avocent based upon the terms and conditions set forth in his Employment Agreement with LANDesk dated September 15, 2002. As an affiliate of LANDesk, the shares of Avocent common stock to be issued to Mr. Wang in the Transaction would not be freely transferable under the Securities Act, but would instead be subject to certain trading restrictions that are not applicable to the shares issued to non-affiliated shareholders. As a result of these additional restrictions, Mr. Wang may enter into an agreement with Avocent that will provide Mr. Wang price protection on the shares of Avocent common stock to be issued to him upon consummation of the acquisition in the form of a repurchase obligation, a put, or a similar arrangement. Mr. Dean is expected to enter into an employment and non-competition agreement with Avocent with terms that are substantially similar to those of other LANDesk executives as described above. Mr. Felt received an Offer Letter from LANDesk dated February 11, 2005 (the "Felt Offer Letter") which details the terms of his severance arrangement. The parties currently contemplate that Mr. Felt will either continue his employment under the terms of the Felt Offer Letter or enter into an amendment to the Felt Offer Letter pursuant to which Mr. Felt will continue his employment under the terms of Felt Offer Letter, as amended, for a transitional period and that a portion of Mr. Felt's unvested LANDesk options identified in the Felt Offer Letter which would be unvested at the end of his transitional period will accelerate.

4. Certain selling shareholders, who are expected to include Vector, vSpring, Intel and Mr. Wang, and possibly other large selling shareholders including WestBridge Ventures and Blueprint Ventures, may create a retention bonus program for the benefit of certain LANDesk employees that would be funded solely out of payments of contingent cash consideration otherwise payable to the selling shareholders voluntarily funding such program. The purpose of this retention bonus program would be to provide additional incentives to such employees to maximize the contingent cash consideration for the benefit of all LANDesk shareholders. This retention bonus program has not yet been finalized. However, if such a program is created, it is expected that up to approximately 25 employees would be included in the program, including each of the executive officers and certain sales personnel of LANDesk identified in paragraph 2, and that payments under the program would not exceed 15% of the total amount of contingent cash consideration payable to the selling shareholders voluntarily funding such program. If this retention bonus program is created it would not affect the contingent cash consideration payable to the shareholders who do not elect to contribute to this program. This retention bonus program has not yet been finalized and is not expected to be finalized prior to the closing of the acquisition.

5. Under Section 280G of the Code, payments made to certain employees (including officers, 1% stockholders and highly compensated employees) that are contingent upon a change in control are generally treated as “excess parachute payments” if the aggregate present value of all such payments to any such individual equals or exceeds three times the individual’s average annual taxable compensation during a statutory base period preceding the year of the change in control. If a payment to any such individual constitutes an “excess parachute payment”, the individual is subject to a 20% excise tax on the excess portion of the parachute payment, and the employer will not be entitled to a tax deduction for this excess portion. Pursuant to the terms of the Felt Offer Letter, Mr. Felt is entitled to payments that may be considered “excess parachute payments” under Section 280G of the Code. These payments consist of a severance payment and the value of the acceleration of certain stock options. Section 280G provides that payments that are approved by the holders of more than 75% of the voting power of all outstanding stock of the company (excluding shares held by certain individuals who have interests in such payments) are exempt from the tax treatment described above. LANDesk has agreed to use its commercially reasonable efforts to seek shareholder approval of such “excess parachute payments” in the time and manner required by Section 280G of the Code. Awards under the retention bonus program referred to above are not expected to result in “excess parachute payments” to the recipients because the retention bonus program is not expected to be finalized until after the closing of the acquisition.

6. In the event that following the closing of the Offer, Avocent makes an election under Section 338 of the Code with respect to LANDesk or any subsidiary of Avocent, Avocent shall indemnify certain affected shareholders as provided in Schedule 7 to the Offer Document.

7. For a period of six years from the closing of the Offer, Avocent will fulfill and honor, to the extent permitted by applicable law, the indemnification obligation of LANDesk for any action that may be instituted by any person except for claims that indemnitees are obligated to indemnify the indemnified parties pursuant to Schedule 4 of the Offer Document owed to each person who is or was a director, officer or employee of the LANDesk at or prior to the closing of

the Offer pursuant to the indemnification provisions of LANDesk's charter documents in effect on the date of the Transaction Agreement.

8. Prior to the closing of the Offer, LANDesk is required to pay any and all outstanding obligations owed to Intel Corporation pursuant to that certain Amended and Restated Purchase and Contribution Agreement, dated as of September 18, 2002 between LANDesk, Intel Corporation and certain LANDesk shareholders, which obligations are equal to \$9,816,487.

9. LANDesk intends to pay transaction bonuses to Robert C. Macfarlane, LANDesk's Vice President of Business Development, Matthew S. Dean, LANDesk's General Counsel and Secretary, David M. Breck, LANDesk's Controller and one non-officer employee of LANDesk, in amounts ranging from \$20,000 to \$30,000 person, in recognition of the contribution of these individuals to the acquisition.

## **AVOCENT'S DESCRIPTION OF AVOCENT'S AND LANDESK'S CAPITALIZATION AND THE EFFECT OF THE ACQUISITION ON EXISTING LANDESK SECURITYHOLDERS**

### **Avocent**

The total authorized shares of capital stock of Avocent consist of 200,000,000 shares of common stock \$0.001 par value per share, and 5,000,000 shares of preferred stock, \$0.001 par value per share.

As of December 31, 2005, the authorized capital stock of Avocent consisted of 200,000,000 shares of Avocent common stock and 5,000,000 shares of preferred stock of Avocent, par value \$0.001 per share. As of December 31, 2005, there were: (A) 48,837,000 shares of Avocent common stock outstanding; (B) 51,612,000 shares of Avocent common stock issued; (C) 3,641,136 shares of Avocent common stock reserved for issuance pursuant to Avocent's stock option plans; (D) 5,684,286 shares of Avocent common stock issuable upon exercise of awarded but unexercised stock options (excluding 732,626 shares of Avocent common stock issuable upon exercise of awarded but unexercised stock options assumed by Avocent in acquisitions); and (E) no shares of Avocent preferred stock outstanding.

The acquisition will not change the rights of the existing stockholders of Avocent; however, the acquisition will dilute Avocent stockholders' equity interest in Avocent because of the increase in the number of shares of Avocent common stock outstanding.

### **LANDesk**

As of June 30, 2006 the authorized share capital of LANDesk consists of US\$105,353.08 divided into 250,000,000 ordinary shares, par value \$0.00001 per share and 102,853,089 preferred shares, par value \$0.001 per share of which there were issued and outstanding (a) 15,530,453 ordinary shares, (b) 100,222,361 preferred shares, (c) 13,490,444 ordinary shares issuable upon the exercise of LANDesk options, of which 6,431,056 are vested and exercisable LANDesk options and 7,059,388 are unvested LANDesk options and (d) 5,061,728 ordinary shares issuable upon the exercise of the LANDesk warrants, at an exercise price of \$0.01 per share.

Pursuant to the acquisition, holders of LANDesk preferred shares and ordinary shares and vested LANDesk options will receive cash and shares of Avocent Common Stock. LANDesk unvested stock options will be assumed by Avocent. LANDesk warrants not exercised prior to the Closing of the Offer will be terminated without consideration to the holders.

### **Comparison of Rights of Holders of Avocent Common Stock and LANDesk Ordinary Shares**

Upon completion of the Offer, the shareholders of LANDesk will become stockholders of Avocent, and the Avocent certificate of incorporation and bylaws will govern the rights of former LANDesk shareholders. The rights of Avocent stockholders are currently governed by Delaware law, and are subject to the Delaware General Corporation Law, Avocent's certificate of incorporation and bylaws. The rights of LANDesk Shareholders are currently governed by Irish law and are subject to LANDesk's memorandum and articles of association, to an investors rights agreement dated 18 September 2002 between LANDesk and certain of its shareholders set out therein relating to certain shareholders' rights in LANDesk and are also subject to a right of first refusal and co-sale agreement dated October 2002 between LANDesk and certain of its shareholders relating to the transfer and sale of shares in LANDesk.

A summary of material differences between the rights of stockholders of Avocent common stock and the rights of holders of LANDesk ordinary shares is set forth in Exhibit C to this notice.

### **AVOCENT'S DESCRIPTION OF THE NUMBER OF AND VOTE REQUIRED BY LANDESK SHAREHOLDERS**

#### **Avocent**

The consent of Avocent's stockholders is not required to approve the Transaction Agreement and the transactions contemplated thereby pursuant to Delaware law or Avocent's certificate of incorporation or bylaws or any securities listing requirements to which Avocent is subject.

#### **LANDesk**

As of April 26, 2006, the date upon which the parties entered into the Transaction Agreement, the outstanding ordinary shares of LANDesk were held by 52 holders of record and the outstanding preferred shares were held by 16 holders of record. The transaction is structured as a share purchase, so no vote of the LANDesk shareholders is required. In lieu of voting, each LANDesk shareholder, other than those who have signed the irrevocable undertakings, may either accept or reject the Offer. It is a condition to the closing that valid acceptances shall have been received in accordance with the transaction documents by holders of not less than 80% in nominal value for each class of shares in the issued share capital of LANDesk.

Certain of the LANDesk shareholders, who collectively hold 13,620,942 ordinary shares and 94,695,265 preferred shares, have signed irrevocable undertakings agreeing to accept the Offer. As of April 26, 2006, such LANDesk shareholders held more than eighty percent (80%) in nominal value of each class of shares in the issued share capital of LANDesk.

## Section 204 Procedure

Avocent, through its subsidiary, will make an Offer to the holders of outstanding LANDesk preferred shares, ordinary shares, vested options and warrants. After the Offer has been completed and accepted by holders of not less than 80% in nominal value of each class of shares in the issued share capital of LANDesk, Avocent, through its subsidiary, will acquire compulsorily any LANDesk outstanding securities from shareholders who have not accepted the Offer on the same terms as those who accepted the Offer in accordance with Section 204 the Companies Act 1963 of Ireland or any other means available under applicable laws.

Section 204 of the Companies Act 1963 of Ireland provides that a dissenting shareholder may apply to court, within one month following the date on which notice of the compulsory acquisition is given, objecting to the compulsory acquisition or its terms. A dissenting shareholder may object to the compulsory acquisition on technical grounds or generally on the basis the compulsory acquisition is unfair to him/it. The onus of proving technical non-compliance or unfairness is on the dissenting shareholder. If a dissenting shareholder is successful in its application, the court has wide discretion to make a variety of orders but is unlikely (in the absence of fraud or oppression) to exercise its discretion to order that the compulsory transfer not take effect; it may, however, vary the terms of the transfer as it thinks fit. To date, the courts have not yet refused that a transfer take place.

## OTHER INFORMATION

### High and Low Sale Prices of Avocent According to Avocent

Avocent common stock is traded on the NASDAQ Global Select Market under the symbol "AVCT" and began public trading on July 3, 2000. Set forth below are the high and low sale prices of Avocent common stock as reported by the NASDAQ Global Select Market for the periods indicated.

<u>Period</u>	<u>High Sale Price</u>	<u>Low Sale Price</u>
<b><i>Fiscal 2006</i></b>		
Third Quarter (through July 17, 2006)	\$26.49	\$23.82
Second Quarter	\$34.40	\$21.98
First Quarter	\$34.86	\$28.54
<b><i>Fiscal 2005</i></b>		
Fourth Quarter	33.88	26.84
Third Quarter	35.38	26.48
Second Quarter	29.09	23.05
First Quarter	40.70	22.99
<b><i>Fiscal 2004</i></b>		
Fourth Quarter	40.69	26.53
Third Quarter	35.69	25.59

<b><u>Period</u></b>	<b><u>High Sale Price</u></b>	<b><u>Low Sale Price</u></b>
Second Quarter	38.24	30.86
First Quarter	42.20	35.64
<b><i>Fiscal 2003</i></b>		
Fourth Quarter	39.53	29.50
Third Quarter	33.38	24.11
Second Quarter	33.85	22.33
First Quarter	29.80	21.68

None of the share capital of LANDesk is publicly traded, and no public market exists for such stock.

### **Federal Securities Laws Matters**

The Transaction Agreement and Offer Document contemplate that the Avocent common stock will not be registered under the Securities Act, in reliance upon the exemption from registration contained in Section 3(a)(10) of the Securities Act. The availability of the Section 3(a)(10) exemption is contingent upon the determination by the California Commissioner of Corporations, after a public hearing which all interested parties are invited to attend, that the terms and conditions of the issuance of the Avocent common stock in connection with the Offer are fair.

In the event that the Commissioner issues the permit covering the Avocent common stock after holding the hearing to which this notice relates, the shares of Avocent common stock that are issued to persons who are not “affiliates” of LANDesk or Avocent may be traded without restriction under the federal securities laws, subject to the transfer restrictions contained in the Transaction Agreement and Offer Document.

### **Further Information**

Further information concerning the acquisition can be found in Avocent’s permit application file and the documents filed in connection therewith at the offices of the Department of Corporations, 71 Stevenson Street, Suite 2100, San Francisco, CA 94105-2980. A duplicate copy of Avocent’s permit application file and the documents filed in connection therewith will also be available for inspection at LANDesk’s offices at 698 West 10000 South, Suite 500, South Jordan, Utah 84095.

### **The Hearing**

Interested persons may be present at the hearing and will be given an opportunity to be heard, but need not be represented by legal counsel. Any interested person will be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents and other items by applying for such subpoenas to the Department of Corporations, Attention: Joanne Ross, 1515K Street, Suite 200, Sacramento, CA 95814-4052. If you are interested in this matter, you may appear at the hearing in favor of or in opposition to the



granting of the permit. Whether you plan to attend or not, you are invited to make your views known by sending correspondence to Corporations Counsel, at the Department of Corporations, Attention: Joanne Ross, 1515K Street, Suite 200, Sacramento, CA 95814-4052. *Please send any correspondence in time for delivery at least three (3) business days before the hearing date. It may not be possible to consider correspondence received thereafter.*

The hearing will be held for the purpose of enabling the Commissioner to determine the fairness of the terms and conditions of the issuance and assumption of the securities by Avocent pursuant to the Transaction Agreement and Offer Document and will be based upon the application and all papers and documents filed in connection therewith. Section 25142 of the California Corporate Securities Law authorizes the Commissioner to hold such hearing when securities will be issued in exchange for other outstanding securities, whether or not the security of transaction is exempt from qualification, to approve the terms and conditions of such issuance and exchange, and to determine whether such terms and conditions are fair, just and equitable.

**A FINDING BY THE COMMISSIONER THAT THE PROPOSED TRANSACTION IS FAIR, JUST AND EQUITABLE, AND THE ISSUANCE OF A PERMIT THEREAFTER, IS NOT A RECOMMENDATION OF THE PROPOSED TRANSACTION.**

San Francisco, California

Dated: July 24, 2006



Preston DuFauchard  
California Corporations Commissioner

**ORIGINAL SIGNED BY**

By: \_\_\_\_\_

W. Anthony Colbert  
Senior Corporations Counsel